



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB149]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project at Naval Base Kitsap Bangor, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the United States Navy (Navy) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Service Pier Extension (SPE) Project at Naval Base Kitsap Bangor in Silverdale, Washington. These activities are identical with activities that were covered by the current authorization, but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Potlock@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-service-pier-extension-project-naval-base-kitsap-bangor>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine

mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed modification IHA (85 FR 74989; November 24, 2020), NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice

would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this

proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

History of Request

On June 28, 2018, NMFS published a notice of our issuance of an IHA to the United States Navy (Navy) authorizing take of five species of marine mammals by Level A and Level B harassment incidental to the pile installation and removal activities (by impact pile driving and vibratory pile driving) for the Service Pier Extension (SPE) Project at Naval Base Kitsap Bangor in Silverdale, Washington (83 FR 30406). Species authorized for take included killer whales (*Orcinus orca*; transient stock only), harbor porpoise (*Phocoena phocoena vomerina*), California sea lions (*Zalophus californianus*),

Steller sea lions (*Eumetopias jubatus monteriensis*), and harbor seals (*Phoca vitulina richardii*). The effective dates of that IHA were July 16, 2019 through July 15, 2020.

On February 4, 2019, the Navy informed NMFS that the project was being delayed by one full year. None of the work identified in the initial IHA (83 FR 30406; June 28, 2018) had occurred and no marine mammals had been taken during the effective dates of the original IHA, and the Navy submitted a formal request for reissuance of the initial IHA with new effective dates of July 16, 2020 through July 15, 2021 and no other changes. NMFS re-issued this IHA on July 3, 2019 (84 FR 31844).

On October 14, 2020, NMFS received a request from the Navy for a modification to the re-issued IHA due to an elevated harbor seal take rate. The Navy felt that without an increase in authorized take of harbor seals, they would be forced to repeatedly shutdown whenever animals entered into the specified Level A harassment zones. This would likely prolong the duration of in-water construction activities and add increased costs to the project. Following a 30-day public comment period, NMFS issued a modified IHA, including revisions to mitigation and increased authorized takes by Level A harassment for harbor seals (85 FR 86538, December 30, 2020), and kept the same July 15, 2021 expiration date that was initially published in the reissuance (84 FR 31844; July 3, 2019).

On April 26, 2021, NMFS received an application for a renewal of the current IHA (85 FR 86538; December 30, 2020). As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the modified IHA but will not be completed prior to its expiration, and the take estimates for all species are based on the 2018 initial IHA and subsequent 2020 modification (for harbor seals only). As required, the applicant also provided a preliminary monitoring report (available at

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-service-pier->

extension-project-naval-base-kitsap-bangor) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. This application was considered adequate and complete on June 15, 2021.

Worth noting and as stated above, NMFS has previously issued an IHA and subsequent reissuances and modifications to the Navy for the subset of activities contained in the Navy's 2021 renewal IHA request. Because the full scope of activities were originally addressed in the initial 2018 IHA (83 FR 30406; June 28, 2018) and the 2020 modified IHA (85 FR 86538), any discussion regarding the scope of analysis and evaluations in this document relating specifically to the issuance of the renewal are explained in more detail in the initial IHA (83 FR 30406; June 28, 2018), in the subsequently proposed modified (85 FR 74989; November 24, 2020), and in the final modified IHA (85 FR 86538; December 30, 2020).

Description of the Specified Activities and Anticipated Impacts

The Navy will be unable to complete all the planned work during the 160-day in-water work window (125 days for the steel pile installation and extraction using a combination of vibratory and impact methods, and 35 days for the concrete impact pile installation) described in the 2018 IHA at Naval Base Kitsap Bangor before the expiration date of July 15, 2021. Therefore, they have requested a renewal IHA to authorize take of marine mammals for the subset of the initially planned work that is not expected to be completed.

As described in the renewal application and conducted under the IHAs to date, the Navy planned to install 203 36-inch (90 centimeter (cm)) diameter steel piles and 50 24-inch (60 cm) diameter steel pipe support piles). Both of these would have been completed using vibratory and impact "proofing" methods (using an impact hammer to test the

functionality of the pile installation). The Navy also planned to temporarily install and subsequently extract 27 36-inch (90 cm) diameter steel falsework piles by vibratory hammer with impact “proofing”. Thirty-six creosote timber piles (19 18-inch (45 cm) diameter and 17 15-inch (38 cm) diameter piles) would have been removed using a vibratory hammer. Lastly, 103 18-inch (45 cm) square concrete fenders piles would have been installed via impact pile driving. The Monitoring Report submitted by the Navy described only a fraction of these activities of which take was authorized under the current IHA occurred, as determined by their project engineers. These include the removal of 22 18-inch creosote-treated timber piles, the installation of 11 24-inch steel piles for the small craft and mooring dolphins, and the installation of 176 36-inch steel piles for the pier and wave screen attachment.

The only work that remains is the installation of the 103 18-inch square concrete fender piles by impact pile driving. These activities were not able to occur during the current IHA. The Navy expects that this will require 35 days during a specified in-water work window (July 16 through January 15) during the year allowed by the renewal IHA. This work window is the same as discussed in the 2018 IHA where work is targeted to avoid conducting activities when ESA-listed juvenile salmonids are likely to be present in the area (February – July; USACE, 2015).

The mitigation and monitoring would be identical to that included in the 2018 IHA (83 FR 30406; June 28, 2018), with the exception of specified shutdown parameters due to the presence of harbor seals added in the modified IHA (85 FR 86538; December 30, 2020). All documents associated with the 2018 IHA (*i.e.*, the IHA application, the proposed IHA, the public comments, the final IHA, references, and the monitoring reports) can be found on NMFS’s website:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-service-pier-extension-project-naval-base-kitsap-bangor>. All documents associated with the

subsequent reissuances and modifications (**Federal Register** notices, draft and final IHAs, and public comments) can be found at this location.

Anticipated impacts, which would include both Level A and Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the 2018 IHA (though fewer, since this project is comprised of a subset of activities). Species with the expected potential to be present during all or a portion of the in-water work window include the killer whale, the harbor porpoise, the California sea lion, the Steller sea lion, and the harbor seal. Monitoring results from the 2020-2021 construction activities (Table 1) indicate that observed exposures above Level A and Level B harassment thresholds were below the amount authorized in association with the amount of work conducted (see the Marine Mammal Monitoring Report on NMFS's website). Thus, a subset of Level A and Level B harassment takes remaining from those authorized under the 2018 IHA (and subsequent reissuances and modifications) will be sufficient to cover the 2021-2022 concrete pile installation activities during the 2021 renewal IHA.

Table 1-- Take Authorized by Species and Stock in 2020-2021 IHA and Observed Take in the 2020-2021 Construction Window

Species	Stock	Authorized Level A harassment takes	Authorized Level B harassment takes	Observed Level A harassment takes	Observed Level B harassment takes
Killer whale	West coast transient	0	48	0	0 ²
Harbor porpoise	Washington inland waters	0	2,728	0	451
California sea lion	United States	0	7,816	0	251
Steller sea lion	Eastern United States	0	503	0	16
Harbor seal	Hood Canal	509 ¹	5,216 ¹	129	429

¹ – Changed per public comments addressed on the notice of the final modified IHA (85 FR 86538; December 30, 2020).

² – Observed by Protected Species Observers (PSOs; also referred to as Marine Mammal Observers (MMOs) in the 2018 IHA) outside of pile driving and removal activities; subsequently not taken during this project. Further information on Marine Mammal Monitoring Report can be found on NMFS's website.

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the 2018 authorization. The work would be identical to a subset of the activities analyzed in the 2018 IHA and include impact pile driving for the installation of concrete piles.

All piles for which take was originally authorized in the 2018 IHA were expected to be installed/removed during the 2020-2021 in-water work window from July 16 through January 15. Vibratory pile driving activities (*i.e.*, pile removal) began on July 16, 2020. Impact pile driving began on September 11, 2020. However, due to construction schedule delays, designated work was only conducted on a portion of those days designated for pile installation and/or extraction during the 2018 IHA. Observers were on site for a total of 99 days, of which 95 of those days contained monitoring effort (644 hours; inclusive of periods of active pile driving and periods between pile driving events). Observers did not conduct monitoring on October 21, 2020 or on the 14th, 15th, and 16th of September 2020 because no pile driving occurred on those dates. The Marine Mammal Monitoring Report states that monitoring days were limited due to low visibility from local wildfires in the area. Further information can be found in the Monitoring Report on NMFS's website.

Table 2 shows the activities under the 2018 IHA (and subsequent reissuance and modification) that were completed from the 2020-2021 construction period and the subset of work that remains for the 2021-2022 construction period under this renewal IHA. The concrete pile driving activities would be timed to occur within the standard NMFS work window for Endangered Species Act (ESA)-listed fish species (July 16 through January 15).

Table 2-- Pile Installations Completed During the 2020-2021 Construction Period Under the Reissued IHA (84 FR 31844; July 3, 2019) and Remaining Subset Planned for the 2021-2022 Construction Window During the Renewal IHA

SPE Project Feature	Pile Type	Pile installation and/or extraction method	Numbers of piles included in 2018 IHA	Number of piles completed during 2020-2021 construction period²	Number of piles requested for 2021 renewal application	Number of pile driving days for 2021-2022 construction period
Pile removal from existing wave screen and pier	15-inch (38 cm) to 18-inch (45 cm) creosote-treated timber	Vibratory	36	22 (18-inch only)	0	0
Temporary Falsework	36-inch steel (30 cm)	Vibratory installation and removal with potential “proofing”	27	0	0	0
Small craft mooring and dolphins	24-inch steel (60 cm)	Vibratory with “proofing”	50	11	0	0
Pier and wave screen attachment	36-inch steel (90 cm)	Vibratory with “proofing”	203	176	0	0
Fender piles	18-in concrete (45 cm)	Impact	103	0	103	35
Total			419	209¹	103	35

¹ – Some of these piles were installed and some were removed per the specific project activity. Some of the total piles were temporarily installed and subsequently removed after installation. A total of 209 piles were utilized in construction activities during 2020-2021, in which 187 piles were installed, 22 piles were removed, and 0 piles were installed temporarily and then subsequently removed.

² – Per the Navy’s submitted Monitoring Report, not all piles for which take was originally authorized were installed or removed.

The proposed renewal would be effective from the date of issuance to July 15, 2022. A detailed description of the impact pile construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial 2018 IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality events, and other scientific literature, and determined that neither this nor any new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2018 IHA. The only changes from the 2018 IHA are an increase in the stock abundance of west coast transient killer whales (from 243 in 2009 to 349 in 2018), a decrease in the abundance of United States stock California sea lions (from 296,750 in 2011 to 257,606 in 2014), and an increase in the stock abundance of Steller sea lions of the eastern United States stock (from 41,638 in 2015 to 43,201 in 2017) (Carretta *et al.*, 2018, Muto *et al.*, 2019, Muto *et al.*, 2020). Preliminary determinations concluded from this updated information do not change the findings or conclusions from the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial 2018 authorization. NMFS has reviewed the monitoring data from the reissued IHA (83 FR 30406; June 28, 2018) and the modified IHA (85 FR 86538; December 30, 2020), recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

As stated above in the **Description of the Specified Activities and Anticipated Impacts** section, the purpose of this renewal IHA is to authorize take of marine mammals for the subset of the initially planned work that could not be completed before the expiration of the current IHA (July 15, 2021). The work completed in 2020-2021 and the subset that is left to be completed during the 2021-2022 construction window is listed in Table 2.

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed (83 FR 10689; March 12, 2018) and final (83 FR 30406; June 28, 2018) IHAs for the initial authorization, and for Level A harassment of harbor seals in the subsequent 2020 modification (85 FR 86538; December 30, 2020). Specifically, the source levels, days of operation (specific to the 35-days for the concrete pile installation), and marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHA and modification, just the new, lesser remaining level of activity has been applied. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued 2018 IHA. The only difference would be the take numbers to be authorized during the 2021-2022 project, which would be composed of a subset of take previously authorized per the previous methods discussed in the 2018 IHA and subsequent modification.

Of note, as described in the notice of the proposed (85 FR 74989; November 24, 2020) and final modified IHA (85 FR 86538; December 30, 2020), at the time of the modification, PSOs had reported up to eight individually identifiable harbor seals that were frequenting the project site and believed to be habituated by varying degrees to in-water construction activities. The Navy's recent Monitoring Report for work conducted under the reissued and modified IHAs reported nine individually identifiable harbor seals; however, in consideration of the Navy's monitoring data overall, NMFS expects

that the previous Level A harassment take calculation for harbor seals was already conservative, and did not recalculate using an estimated nine Level A harassment takes per day.

These proposed amounts of Level A and Level B harassment are indicated below in Table 3.

Table 3-- Proposed Take of Marine Mammal Stocks and Percentage of Stock or Population for the Renewal IHA During the 2021-2022 Project Period

Species	Scientific name	Stock	Proposed authorized Level A harassment take	Proposed authorized Level B harassment take	Percent of Stock Proposed to be taken	
					<i>Level A harassment</i>	<i>Level B harassment</i>
Killer whale	<i>Orcinus orca</i>	West coast transient	0	0	0	0 ³
Harbor porpoise	<i>Phocoena phocoena vomerina</i>	Washington inland waters	0	0	0	0 ³
California sea lion	<i>Zalophus californianus</i>	United States	0	1,710	0	0.7
Steller sea lion	<i>Eumetopias jubatus monteriensis</i>	Eastern United States	0	110	0	0.3
Harbor seal	<i>Phoca vitulina richardii</i>	Hood Canal	280 ¹	1,225	n/a ²	n/a ²

¹ - Level A harassment take is associated with impact pile driving of the 18-inch concrete square pile, which was not conducted in 2020-2021 as planned and is part of the subset of work to be completed in 2021-2022.

² - Because the stock information is not considered current, there are no minimum abundance estimates to use for calculation.

³ - Take of harbor porpoise and killer whale was included in the 2020 modified IHA (85 FR 86538; December 30, 2020); however, we do not take of either species to occur as a result of the remaining work that would be conducted under this renewal IHA.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the modified IHA (85 FR 86538; December 30, 2020), and the discussion of the least practicable adverse impact included in that document and the Notices of the proposed IHAs remains accurate. This IHA, if issued, would be valid

from the date of issuance through July 15, 2022 with construction activities occurring only during the pre-designated work window (July 16 through January 15). The following requirements, mitigation measures, monitoring, and reporting requirements are proposed for this renewal, as were previously included in the initial IHA and subsequent modification:

Timing Restrictions – To minimize the number of fish exposed to underwater noise and other construction disturbance, in-water work will occur during the in-water work window previously described when ESA-listed salmonids are least likely to be presence (USACE, 2015), July 16 to January 15.

All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving will only occur starting 2 hours after sunrise and ending 2 hours after sunset, to protect foraging marbled murrelets during the nesting season (April 15-September 23). Sunrise and sunset are to be determined based on National Oceanic and Atmospheric Administration data, which can be found at <http://www.srrb.noaa.gov/highlights/sunrise/sunrise.html>.

Soft-Start – The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a 30 second waiting period, then two subsequent reduced energy strike sets. (The reduced energy of an individual hammer cannot be quantified because it varies by individual drivers. Also, the number of strikes will vary at reduced energy because raising the hammer at less than full power and then releasing it results in the hammer “bouncing” as it strikes the pile, resulting in multiple “strikes.”)

A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes.

Establishment of Shutdown Zones and Disturbance Zones – To the extent possible, the Navy will record and report on any marine mammal occurrences, including behavioral disturbances, beyond 100 m for concrete pile installation. The Navy will monitor and record marine mammal observations within zones and extrapolate these values across the entirety of the Level B harassment zone as part of the final monitoring report.

The shutdown zones are based on the distances from the source predicted for each threshold level. Although different functional hearing groups of cetaceans and pinnipeds were evaluated, the threshold levels used to develop the disturbance zones were selected to be conservative for cetaceans (and therefore at the lowest levels); as such, the disturbance zones for cetaceans were based on the high frequency threshold (harbor porpoise). The shutdown zones are based on the maximum calculated Level A harassment radius for pinnipeds and cetaceans during installation of concrete piles with impact techniques. These actions serve to protect marine mammals, allow for practical implementation of the Navy's marine mammal monitoring plan and reduce the risk of a take. The shutdown zone during any non-pile driving activity will always be a minimum of 10 meters (m; 33 feet (ft)) to prevent injury from physical interaction of marine mammals with construction equipment.

During all pile driving, the shutdown, Level A harassment, and Level B harassment zones as shown in Table 4 will be monitored out to the greatest extent possible with a focus on monitoring within 100 m for concrete pile installation.

The isopleths delineating shutdown, Level A harassment, and Level B harassment zones during impact driving of all concrete piles are shown in Table 4. The shutdown,

Level A harassment, and Level B harassment isopleths for concrete impact driving remain unchanged from the notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). Note that the Shutdown Zone is larger than the Level A harassment isopleth which is larger than the Level B harassment isopleth for cetaceans, and that the Shutdown Zone is larger than the Level A harassment isopleth for harbor seals and sea lions.

Table 4-- Shutdown, Level A Harassment, and Level B Harassment Isopleths During Impact Driving of Concrete Piles

Marine Mammal Group	Level B Harassment Isopleth (meters)	Level A Harassment Isopleth (meters)	Shutdown Zone (meters)	Minimum monitoring zone for concrete piles
Cetaceans ¹	46	74	100	100 meters ²
Harbor seal	46	19	35	
Sea Lions	46	1	15	

¹ – The take of harbor porpoise and killer whale was included in the 2020 modified IHA (85 FR 86538; December 30, 2020); however, we do not take of either species to occur as a result of the remaining work that would be conducted under this renewal IHA. Because of this, the Level A and B harassment isopleths and the Shutdown Zone for cetaceans is not likely to be relevant for this project.

² – The Navy has noted in their renewal application that they will be monitoring a 100 meter radii from the project site, as practicable, in addition to the specified Level A and B harassment isopleths and the Shutdown Zone for each marine mammal group.

Further, note that the radii of the disturbance zones may be adjusted if in-situ acoustic monitoring is conducted by the Navy to establish actual distances to the thresholds for a specific pile type and installation method. However, any proposed acoustical monitoring plan must be pre-approved by NMFS. The results of any acoustic monitoring plan must be reviewed and approved by NMFS before the radii of any disturbance zones may be revised.

As described above, and in the notice proposed (85 FR 74989; November 24, 2020) and final modified IHA (85 FR 86538; December 30, 2020), at the time of the modification to the initial IHA, PSOs had reported up to eight individually identifiable harbor seals that were frequenting the project site and believed to be habituated by varying degrees to in-water construction activities. Based on the preliminary monitoring report provided by the Navy with their renewal application, a ninth seal has been noted in

the area; however this seal has not been noted as an individual seen “daily” and therefore not necessitated any changes to the harbor seal-specific mitigation measures mentioned below.

Even with a 35 m shutdown zone during impact driving, the Navy is still concerned that they would experience frequent work stoppages due to frequent visits by habituated harbor seals. This could result in continued schedule delays and cost overruns and could potentially require an extra year of in-water construction activities. Given this information, the Navy has indicated that it is not practicable for them to shut down or delay pile driving activities every time a harbor seal is observed in a shutdown zone. Therefore, they have proposed to apply identical measures to those in the modified IHA (85 FR 86538; December 30, 2020), in which shutdowns will be initiated for harbor seals when observed approaching or entering the Level A harassment zones as described above, except when one or more of the three habituated harbor seals identified as daily visitors approaches or enters an established shutdown zone. In such cases, a single take by Level A harassment shall be recorded for each individual seal for the entire day and operations will be allowed to continue without interruption; although the Navy must still shut down for these harbor seals if they occur within 10 m of the pile-driving site. The behavior of these three daily visitors will be monitored and recorded as well as the duration of time spent within the harassment zones. This information will be recorded individually for each of the three seals. If any other seals, including the five habituated seals identified as frequent visitors, approaches or enters into a Level A harassment zone, shutdown must occur.

The mitigation measures described above should reduce marine mammals' potential exposure to underwater noise levels which could result in injury or behavioral harassment. Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the

proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

PROPOSED MONITORING MEASURES

Visual monitoring –PSOs will be positioned at the best practicable vantage points, taking into consideration security, safety, and space limitations. Each PSO location will have a minimum of one dedicated PSO (not including boat operators). There will be 3-5 PSOs working depending on the location, site accessibility and line of sight for adequate coverage. Additional standards required for visual monitoring include:

- (a) Independent observers (*i.e.*, not construction personal) are required;
- (b) At least one observer must have prior experience working as an observer;
- (c) Other observers may substitute education (degree in biological science or related field) or training for experience;
- (d) Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

Monitoring will be conducted by qualified observers, who will monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- (a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- (b) Advanced education in biological science or related field (undergraduate degree or higher required);
- (c) Experience and ability to conduct field observations and collect data

according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(f) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(g) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs will survey the disturbance zone 15 minutes prior to initiation of pile driving through 30 minutes after completion of pile driving to ensure there are no marine mammals present. In case of reduced visibility due to weather or sea state, the PSOs must be able to see the shutdown zones or pile driving will not be initiated until visibility in these zones improves to acceptable levels. MMO Record forms (Appendix A of the original 2018 application; see NMFS's website) will be used to document observations. Survey boats engaged in marine mammal monitoring will maintain speeds equal to or less than 10 knots.

PSOs will use binoculars and the naked eye to search continuously for marine mammals and will have a means to communicate with each other to discuss relevant marine mammal information (*e.g.*, animal sighted but submerged with direction of last sighting). PSOs will have the ability to correctly measure or estimate the animals distance

to the pile driving equipment such that records of any takes are accurate relevant to the pile size and type.

Shutdown shall occur if a species for which authorization has not been granted or for which the authorized numbers of takes have been met. The Navy shall then contact NMFS within 24 hours.

If marine mammal(s) are present within or approaching a shutdown zone prior to pile driving, the start of these activities will be delayed until the animal(s) have left the zone voluntarily and have been visually confirmed beyond the shutdown zone, or 15 minutes has elapsed without re-detection of the animal.

If animal is observed within or entering the Level B harassment zone during pile driving, a take would be recorded, behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the Shutdown Zone, at which point all pile driving activities will be halted. The PSOs shall immediately radio to alert the monitoring coordinator/construction contractor. This action will require an immediate “all-stop” on pile operations. Once a shutdown has been initiated, pile driving will be delayed until the animal has voluntarily left the Shutdown Zone and has been visually confirmed beyond the Shutdown Zone, or 15 minutes have passed without re-detection of the animal (*i.e.*, the zone is deemed clear of marine mammals).

All marine mammals observed within the disturbance zones during pile driving activities will be recorded by PSOs. These animals will be documented as Level A harassment or Level B harassment takes as appropriate. Additionally, all shutdowns shall be recorded.

In the unanticipated event that: (1) The specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality; (2) an injured or dead animal is discovered and cause of death

is known; or (3) an injured or dead animal is discovered and cause of death is not related to the project activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the original 2018 application).

PROPOSED REPORTING

Reporting – PSOs must record specific information as described in the Federal Register notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018) and the modified IHA (85 FR 86538; December 30, 2020). Within 90 days after completion of pile driving and removal activities, the Navy must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that: (1) The specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality; (2) an injured or dead animal is discovered and cause of death is known; or (3) an injured or dead animal is discovered and cause of death is not related to the project activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the application).

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA for the initial IHA (83 FR 10689; March 12, 2018) and modified IHA (85 FR 74989; November 24, 2020) and solicited public comments on both our proposal to issue the initial IHA (83 FR 30406; June 28, 2018) and modified IHA (85 FR 86538; December 30, 2020) for pile driving and removal activities and on the potential for a renewal IHA, should certain requirements be met. All public comments were addressed in the notice announcing the

issuance of the initial IHA (83 FR 30406; June 28, 2018) and the modified IHA (85 FR 86538; December 30, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the renewal of the 2018 IHA (83 FR 30406; June 28, 2018) and the modified IHA (85 FR 86538; December 30, 2020).

Comment: The Commission requested clarification of certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the renewal process, as proposed, would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: In prior responses to comments about IHA Renewals (*e.g.*, 84 FR 52464; October 02, 2019, and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

Preliminary Determinations

The proposed action of this renewal IHA for the installation of concrete piles by impact pile driving would be identical to a subset of the activities previously analyzed in the 2018 IHA (83 FR 30406; June 28, 2018), as listed in Table 2. Based on the analysis detailed in the notice of the final IHA for the 2018 authorization and subsequent 2020

modification, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA (83 FR 30406; June 28, 2018). This includes consideration of the estimated abundance of the stocks for Steller sea lions (Eastern United States) and killer whales (West Coast transient), increasing slightly, and the estimated abundance for the stock of California sea lions (United States) decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following:

- (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat;
- (2) The authorized takes will have a negligible impact on the affected marine mammal species or stocks;
- (3) The authorized takes represent small numbers of marine mammals relative to the affected stock abundances;
- (4) The Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and;
- (5) Appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting impact pile driving at Naval Base Kitsap Bangor in Silverdale, Washington during the in-water construction window of July 16 through January 15, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-service-pier-extension-project-naval-base-kitsap-bangor>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: July 14, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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